

**Date:** September 10, 2013

**To:** Thomas J. Bonfield – City Manager

**Through:** W. Bowman Ferguson – Deputy City Manager

**From:** Marvin G. Williams – Director of Public Works

**Subject:** Update on Failed and Struggling Developments

**Executive Summary**

The Failed and Struggling Development Program was created to assure the completion of all required infrastructure and private stormwater facilities at minimal costs to citizens and the City of Durham. The City of Durham Public Works Department currently oversees the program and is responsible for approximately 100 projects or phases of projects; which span across 27 subdivisions. This update summarizes the following items:

- A. Number of projects per category as of September 10, 2013
- B. List of developments added to program since March 4, 2013
- C. Status of current Category 4: Failed developments
- D. Status of Category 3 Projects in Litigation: Stonehill Estates and Ravenstone I & II
- E. Developments successfully completed since March 4, 2013

**Recommendation**

The Public Works department recommends that City Council receive the update on the Failed and Struggling Development Program.

**Background**

Since late 2008, the economy has drastically changed the manner in which the construction and housing industries operate. These changes have resulted in a country-wide decline in new home sales and overall commercial developments. In addition, banking and financial markets which provided financial assistance to developers, builders, and owners, have undergone changes that have resulted in an environment that is inherently unstable for these customers. This instability has created situations in which some developers are no longer able to sustain developments and are forced to close their businesses or restructure their companies. As a result of the company closings and restructurings, some developers have not completed the street, sidewalk, and stormwater facility infrastructure required for developments.

In response to this situation, the Failed and Struggling Development Program was created in early 2009. The Public Works Department was assigned to oversee this program to assure the completion of required infrastructure.

As developments are added to the program, the Public Works Department has placed each development into one of four categories of financial distress. Each development has unique circumstances and the tools that are available to help guide one development to completion, but may not be available to the same degree in another development. Projects may move from one category to another based on various factors (developer solvency, product sales, assets, construction security amounts, infrastructure to be completed, etc.). The four categories are defined as follows:

- **Category 1- Restructured Developments:** The developer restructured the company or a new developer purchased the project. Projects have appropriate construction securities in place and are completing the required infrastructure.
- **Category 2 – Monitored Developments:** Projects have shown multiple signs of financial distress. Public Works has been monitoring the development's progress and is working with the Developer to assure completion of the project's infrastructure. The lender will often become part of the discussion to monitor the project in case the project goes into default.
- **Category 3 – Struggling Developments:** The developer has filed for bankruptcy or is unresponsive to Public Works requests to complete the infrastructure. Public Works and the City Attorney's Office will begin obtaining any remaining funds available for completion of the development (either through calling securities or actively pursuing these funds through lawsuits).
- **Category 4 – Failed Developments:** The developer company has functionally dissolved and Public Works has either obtained construction security funds or there were no construction securities available. The Public Works department is working through available options for consideration by City Council to determine the most appropriate way to complete the required infrastructure.

The Public Works Department's most difficult developments to bring to successful conclusion are located in Category 4. These developments may lack sufficient construction security funding to complete the infrastructure required in the project and the development companies are defunct. Construction security amounts were established with prices current at the time of construction, but as developments languished the base price of labor and

materials has increased dramatically. Many developments have degraded over time due to the developer's neglect, and in some cases the degradation has been substantial. The cost to repair the degradation increases the cost to complete such developments considerably. Construction security amounts were initially established as reasonable security measures to ensure compliance, not as a total project completion funding source. Accordingly, in most cases the construction securities are insufficient and considerations of other ways to secure funds to complete the infrastructure are necessary.

In 2012, policies were developed by the Public Works Department and approved by City Council to attempt to prevent a repeat of situations like this from occurring in the future. Security amounts have been increased to levels that would appropriately fund completion of the required infrastructure. Monitoring of these securities and amounts occurs annually.

### Issues and Analysis

The following updates and information items are provided by the Public Works Department and are current as of September 10, 2012.

#### A. Number of projects per category as of September 10, 2013

Table 1: Project and Subdivision Totals per Category

Category	Description	Projects or Phases	Number of Subdivisions Represented
1	Restructured Developments	24	8
2	Monitored Developments	23	7
3	Struggling Developments	33	3
4	Failed Developments	20	9
	TOTALS	100	27
	Completed Developments without financial impact to the residents of the projects*	90	26
	Completed Developments with financial impact (ie project will be assessed for completion of infrastructure) to the residents of the projects	1	1

**B. List of developments added to program since March 4, 2012**

No new developments have been added to the Failed and Struggling Development Program.

**C. Status of current Category 4: Failed developments**

The Category 4 failed developments are listed below in Table 2. A specific status update for each project follows this table. Attached to this memo in Appendix A are satellite maps with legends indicating the location of the developments, incomplete infrastructure, stormwater facility locations (BMP), and completed infrastructure.

Table 2: Category 4 Summary

Subdivision	Total Lots	Vacant Lots	Security Obtained		Incomplete Infrastructure
			Streets	Stormwater Facilities	
Bay Pointe Phase III	68	0	\$145,000	n/a	Streets
Green Gardens Phase II	70	18	Any Remaining funds from Baypoint III	n/a	Streets
Pearl Knoll	12	6	\$10,000	\$12,000 and \$4,317 (SFA)*	Streets and stormwater facility
Riverside on the Eno	24	13	\$60,000 (\$30,000 used to pave the streets)	\$24,000 and \$19,790 (SFA) +\$30K left from streets	Stormwater facilities
Windermere Ridge Townhomes	42	19	\$10,000	\$60,000	Street and stormwater facilities
Northern Way	13	6	\$14,000	\$42,496	Street, transfer of Stormwater Facility to an active HOA, address maintenance deficiencies,
Forrest Brook	20	1	\$6,000	n/a	Sidewalk only
The Landings at Southpoint Phase 1	2 buildings with 27 apartments each built (1 future building with 103 units remaining)		n/a	\$0	Stormwater facilities

\* (SFA): Funds to secure obligations required by Stormwater Facility Agreements  
Project Status Updates

1. Bay Pointe Phase III: A sixty eight lot phase of the Bay Pointe subdivision project with all lots completed. The development requires the completion of streets in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. This subdivision has no required stormwater facilities. Please see Green Gardens Phase II below.
2. Green Gardens Phase II: A seventy lot phase of the Bay Pointe Subdivision with eighteen vacant lots left for construction. The development requires the completion of streets in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. This subdivision has no required stormwater facilities. The vacant lots in the subdivision are owned by SunTrust Bank. The Public Works Department has facilitated the purchase of the Green Gardens Phase II development. The Public Works Department has successfully negotiated with the new owner (Level Homes) of Green Gardens phase II and will be bringing an agreement forward for approval that would allow the City of Durham to take advantage of the construction in the Green Gardens Project and complete the infrastructure in the Baypointe Phase III neighboring subdivision.
3. Pearl Knoll: A twelve lot project with six vacant lots, the development requires the completion of streets in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. The subdivision has a single stormwater facility that must be completed. The vacant lots in the project are owned by BB&T Bank. The Public Works Department has been working with BB&T to resolve the situation, since insufficient security funds exist to complete all of the required improvements. This task has been complicated by the lack of a legally established HOA. BB&T Bank recently decided to sell the Pearl Knoll lots at auction to divest itself of the responsibility of completing this project. The Public Works department will endeavor to work with the new owner of the project to seek a resolution that completes the infrastructure.
4. Riverside on the Eno: A twenty four lot subdivision with thirteen vacant lots owned by BB&T and private owners. The development contains two stormwater facilities that need to be completed. During the 2012 paving season, the Public Works Department completed the streets using approximately half of the money from the construction security collected for this purpose. The remaining funds from the construction security will be used for the completion of the stormwater facilities.
5. Windermere Ridge Townhomes: A forty lot phase of a seven phase townhouse project. The development requires the completion of a street in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. The subdivision has a single stormwater facility that must be

completed. The completion of the development has been delayed due to bankruptcy and foreclosure for the third time. At the end of the current foreclosure, SouthBank will become the new owner of the project. The future phases of the development have been purchased by a new owner who will develop these parcels in the future. The Public Works Department, Southbank and the new developer are developing an agreement to use the collected securities so that the infrastructure can be completed in the near future. Once the home owners association agrees to participate in the agreement and to allow access to complete the project infrastructure, the Public Works Department will bring the agreement and stormwater facility agreement forward for City Council Approval.

6. Northern Way: A twelve lot project with six vacant lots, the development requires the completion of streets in conformance with City requirements, which includes among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. The subdivision has a single stormwater facility that was completed but not appropriately maintained or transferred to the home owners association. The vacant lots are owned by RCP Investments, LLC and private owners. The Public Works Department has met with developers interested in buying the vacant lots and has explained to them the work required to complete the infrastructure.
7. Forrest Brook: The streets are complete in this subdivision. The only infrastructure that remains to be built is approximately 100 feet of sidewalk and one curb ramp in front of the only vacant lot. Public Works will require the owner of the lot to build the sidewalk and curb ramp prior to releasing the certificate of compliance.
8. The Landings at Southpoint: The first phase of a condominium development, the development contains three stormwater facilities that are unfinished and are currently unmaintained. The project contains no streets, only parking lots. Paragon Commercial Bank has foreclosed on the development rights to the project for the future condominium units. The Public Works Department has met with Paragon Commercial Bank and has explained to them the work required to complete the infrastructure.

#### **D. Status of Category 3 Projects in Litigation: Stonehill Estates and Ravenstone I & II**

The securities associated with Ravenstone and Stonehill Estates subdivisions are the subject of a federal declaratory judgment lawsuit brought by the companies that issued the securities. Both the City and the sureties have filed motions for summary judgment. The judge has not ruled on these motions yet.

#### **E. Developments successfully completed since July 1, 2012**

1. Brightleaf at the Park: Brightleaf at the Park in Durham is located north of Highway 70 approximately 3,000 feet east of the intersection of Highway 70 and Mineral Springs Road. Brightleaf is notable as the largest subdivision in the struggling and failed development program in Durham and is also the largest subdivision actively under construction. It is a mix of single family residences, townhomes, an apartment complex, a school, and a swim and tennis club with a potential density of 2200 residential units that encompasses approximately 800-acres of property. By comparison, Brightleaf is approximately four (4) times larger than the Ravenstone and Stone Hill Estates subdivisions combined. On August 22<sup>nd</sup>, 2013 the street infrastructure in Brightleaf at the Park was completed by LSTAR. The Public Works Department will be bringing these streets forward for acceptance in the near future. By July of 2014, the Public Works Department expects the completion of the remaining 17 stormwater facilities located in the project.
2. Dunwoody: A twelve lot subdivision project that has houses constructed on all lots. The development contains a single ribbon paved cul-de-sac street in which the street has not been completed. This subdivision has no required stormwater facilities. The Public Works Department completed the street infrastructure on August 9th of 2013. The final cost of the street infrastructure is \$12,110.74. The Dunwoody residents will be responsible for \$4,010.74 of this amount. An assessment package for this amount will be brought forward to City Council for approval in the near future.
3. Lynn Hollow II: A forty seven lot phase of the subdivision that has houses constructed on all lots. The development required the completion of streets in conformance with City requirements, which included among other items, repairs to curb and gutter, utility cover adjustments, street subgrade repairs, and completion of the required asphalt structure. This subdivision has stormwater facilities that were completed by the original developer and are currently owned and maintained by the Lynn Hollow Home Owners Association. Public Works completed the street infrastructure of the Lynn Hollow Project on August 2, 2013. The final cost of the street infrastructure is approximately \$35,000.00 (there is one punch list item still outstanding). The project had \$22,000.00 in construction securities that were applied to the completion of this work. As these streets were accepted, the remaining cost will be absorbed by the Public Works FY 2013 repaving funds.
4. Ashton Hall: A 400 lot, 6 phase subdivision which began construction in 2007 under McCar Homes. McCar homes constructed portions of Phase 1, 3A, 4, and 5 before going bankrupt in 2009. In early 2010, Beazer Homes purchased the subdivision and began to bring the development back to life. Since then, Public Works has constantly monitored the status of the development to ensure that the subdivision would be completed. Public Works has worked closely with Beazer Homes to complete the remaining infrastructure. To date, the infrastructure for Phases 1, 3A, 4, 5, and 6 has

been completed. Phase 3B is currently under construction and is continuing to move forward with completion. The remaining Phase 2 is currently in the plan approval process to begin construction.

5. The Park at Southpoint: A 24-lot mixed used development (primarily commercial) that has two lots developed, housing the Johnson Lexus and Crown Honda car dealerships. The road that accesses the two dealerships, Southpoint Autopark Boulevard, was constructed in 2005. The Developer issued a bond in lieu of installing the final lift of asphalt on the road. This road connects Highway 751 to Audobon Lake Drive and is heavily travelled. During these past 8 years Public Works constantly had asked the Developer to repair the road and install the final lift of asphalt. In 2011 Public Works contacted the bonding company requesting that the improvements on the road be completed. Working with the bonding company, and the Developer, Public Works has negotiated to complete the improvements on Southpoint Autopark Boulevard. The street infrastructure repairs and the final lift of asphalt were installed in July and August of this year.
6. Crestfield: A 31 lot subdivision with 18 vacant lots recently completed the foreclosure process. The subdivision was added to the Failed and Struggling Development Program as a Category 3 struggling development in 2012. The developer went bankrupt prior to completing the streets and a drainage issue created by the development of the project. Stormwater facilities were not required for this subdivision. Harrington Bank, FSB completed the street infrastructure in December 2012. The drainage issue has been completed by Southbank and the neighboring property owners affected have accepted the improvements as complete and resolved.

The Public Works Department continues to coordinate with developers, banks, bonding companies, attorneys, and prospective buyers to complete infrastructure for projects in the Failed and Struggling Development Program. In the future, the Public Works Department will bring to City Council specific projects with recommendations for action when projects have no route to completion other than specific City intervention.

#### **Alternatives**

The Alternatives section is not applicable for this update.

#### **Financial Impact**

The Financial Impact section is not applicable for this update.

#### **SDBE Summary**

The SDBE Summary section is not applicable for this update.